

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3022 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? :

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ALOIS GHERAVAS MEKWAN

Versus

DIVISIONAL CONTROLLER

Appearance:

1. Special Civil Application No. 3022 of 1989
MR JS BRAHMBHATT for Petitioner No. 1
MR PRANAV G DESAI for Respondent No. 1
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/05/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Brahmbhatt for the petitioner and Mr. Pranav G. Desai for the respondent corporation. By way of this petition, the petitioner has challenged the award made by the labour court Baroda in

Reference (LCV) No. 195 of 1986 dated 7th October, 1988 wherein the labour court has granted reinstatement in favour of the petitioner workman while setting aside the order of dismissal dated 1st February, 1980 but has not granted back wages for the interim period. Therefore, the petitioner workman has challenged the award made by the labour court concerned in so far as it relates to refusal of back wages for the intervening period.

2. This petition was admitted and ordered to be expedited by this Court by order dated 23rd April, 1992.

3. Learned advocate Mr. Brahmbhatt for the petitioner has submitted that the labour court has in terms come to the conclusion that the misconduct alleged against the petitioner has not been found to have been proved on record and that there was some defect in the departmental inquiry held against the petitioner workman. According to him, in view of such findings given by the labour court, the labour court ought to have granted full back wages to the petitioner. He has further submitted that if there is some proceedings filed by the petitioner, then, for that period, the labour court may not grant the back wages but for rest of the period, the labour court is not justified in refusing the back wages. Thus, according to him, the labour court has committed an error in not granting back wages to the petitioner while making an award of reinstatement.

2. On the other hand, learned advocate Mr. Desai appearing for the respondent corporation has submitted that the labour court was right in appreciating that there was delay on the part of the petitioner. According to him, initially, the petitioner approached the civil court wherein the civil suit filed by the petitioner has been dismissed and, thereafter, order granting permission application passed by the conciliation officer was challenged before this court wherein this Court has rejected the said petition and this has delayed the matter and in view of this aspect of delay, the labour court was right in denying the back wages for the intervening period. He has further submitted that even otherwise, there was nothing on record to indicate that the petitioner has remained unemployed or that he has not been gainfully employed during the intervening period and therefore, on that count also, the petitioner is not entitled to claim back wages for the intervening period.

I have considered the submissions made by Mr. Raval. I have also perused the award in question made by the labour court. Upon perusal of the award in question,

it appears that the labour court has considered the charges levelled against the respondent and has believed the explanation given by the respondent wherein the respondent has explained that at the time when one passenger Kiritbhai Patel boarded in the bus, he was injured in the bus and therefore he immediately attended the said passenger and some treatment was given to the said passenger and meanwhile his bus was checked by the checking squad and the passenger was sent for medical treatment to the doctor and there after within ten minutes when he crossed the distance of about 3 kms, bus was checked and, therefore he has not been able to issue the tickets to the concerned passengers due to the said incident. Before the labour court, certificate issued by the Doctor Paresh Parikh has been produced at page 13 and the statement of the injured passenger namely Kirit Patel which statement was given before the Depot Manager was on record at page 14 of the papers of inquiry and the labour court, after considering evidence before it and also after considering the explanation tendered by the respondent workman, believed it as true and has thereafter come to the conclusion that the explanation given by the respondent that one passenger was injured and he was attending that passenger and was giving treatment and meanwhile bus was checked and, therefore, he was not able to issue tickets to those passengers from whom he has not recovered the fares, was true. In view of these aspects, the labour court exercised the powers under section 11A of the I.D.Act while keeping in view the 16 years' service of the respondent and the past record in detail and has appreciated that in past, there was no misconduct of dishonesty and misappropriation and therefore considering all these aspects of the matter and also considering the time consumed by the petitioner in prosecuting the remedy initially before the civil court and then before this Court in challenging the order passed by the conciliation officer granting permission, the labour court thought it proper not to award back wages for the intervening period while setting aside the order of dismissal and granting reinstatement. Further, the petition being special civil application no. 5011 of 1989 filed by the Corporation challenging very same award granting reinstatement has been dismissed by this Court on 11th April, 1989 by holding that the award made by the labour court does not require any interference of this Court in exercise of the powers under Article 226/227 of the Constitution of India. Therefore, in view of all these aspects of the matter, the petition challenging the very same award filed by the worker also is not required to be entertained by this Court and is, therefore, required to be dismissed.

For the reasons recorded hereinabove, this petition is dismissed. Rule is discharged. There shall be no order as to costs.

3.5.2002. (H.K. Rathod, J.)

Vyas